IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Reetobroto Kumar Mitra

FMA 1110 of 2024
+
IA No. CAN 1 of 2024

Bank of India
-Versus-
Shri Manash Sen Chowdhury & Ors.

For the Appellant	:	*Mr. R.N. Majumder,* *Mr. S.M. Obaidullah,* *Mr. Roni Chowdhury.*
For the Respondent No.1/ Writ Petitioner	:	*Mr. Bikash Ranjan Neogi,* *Ms. Ananya Neogi,* *Ms. Anushka Ghosh*
Hearing is concluded on	:	*21st March, 2025.*
Judgment On	**:**	**27th March, 2025.**

Tapabrata Chakraborty, J.

1. A disciplinary proceeding (in short, DP) was initiated against the writ petitioner/respondent herein, namely, Manash Sen Chowdhury (in short, Manash) by a chargesheet dated 9th July, 2007, while he was working as a Staff Clerk Cashier at the South Suburbs (Behala) Branch of the Bank

of India, the appellant herein. The first charge was that he had not accounted for the cash received across the counter in the books of the bank on 29.06.2006 and had temporarily misappropriated the amount till 11.07.2006, the second charge was that the reported transactions in his O/D A/c nos. 202,121 and S/B A/c no. 9384 establish that he was engaged in trade or business outside the scope of his employment and the third charge was that the reported transactions in his O/D A/c no. 202 establish that he had availed loan from HSBC, HDFC and M/s Deserie Agro Resorts Development Private Limited in violation of the undertaking given by him to the bank while availing Clean O/D facility of Rs. 3.5 lacs on 14.01.2002. Manash replied to the chargesheet and an enquiry was initiated by the Enquiry Officer (in short, EO). In the midst thereof, he was suspended by an order dated 22.12.2006. Manash participated in the enquiry but no enquiry report (in short, ER) was supplied to him. Subsequent thereto, a show cause notice was communicated by the Disciplinary Authority (in short, DA) *vide* memo dated 22.01.2208 asking him to submit a representation on the findings of the EO and the substituted findings of the DA. Along with the said notice, a copy of the EO dated 29.11.2007 was also communicated to him. After he replied to the said notice on 07.02.2008, an order of punishment of compulsory retirement was communicated by the DA *vide* memo dated 12/19.02.2008. Challenging the same, Manash preferred a statutory appeal which was, however, dismissed by an order passed by the Appellate Authority (in short, AA) on 29.08.2008. Aggrieved thereby, he preferred the writ petition being WPA 25292 of 2008 and the judgment dated

10.06.2024 delivered in the same is the subject matter of challenge in the present appeal preferred by the appellant herein, namely, Bank of India.

2. In the ER, the EO found the second and third charges to have been proved and in respect of charge no.1 it was observed *'Partially Proved. Misappropriation of the amount of Rs. 18,000/- is proved while the refund of the said amount by CE through his spouse is not proved'*. However, the DA in the notice dated 22.01.2008 affirmed the findings of the EO in respect of the second and third charges but in respect of the first charge he observed *inter alia* that *'on the basis of preponderance of probability, it is established in the enquiry that Mrs. Chitra Sen Chowdhury handed over Rs. 18000/- on 11.07.2006 to the Senior Branch Manager, Ultadanga Branch and hence the undersigned differs with the findings of the Enquiry Officer to that extent and accordingly hold that Charge-1 is conclusively proved against you'*.

3. Mr. Majumder, learned advocate, assisted by Mr. Obaidullah, learned advocate appearing for the appellant submits that indisputably the second and the third charges levelled against Manash stand proved through the concurrent findings of the EO and the DA. The difference of opinion amongst them as regards the first charge is that the former had found the said charge to have been partially proved whereas the latter had found the said charge to have been conclusively proved. Such difference of opinion weighed with the authorities towards imposition of the punishment of compulsory retirement. Question of any relaxation of the said order of punishment does not occasion inasmuch as it needs to be borne in mind that in banking service absolute integrity and honesty is required to be

preserved and in the event such discipline is not maintained, the confidence of public would be impaired. Manash in banking service was expected to be extremely cautious in his duties and having committed the offence, he cannot lament.

4. Drawing the attention of this Court to the ER, Mr. Majumder argues that the fact that the money was tendered over the counter was accepted by Manash stood proved since his signature in the original counter – foil of paying-in-slip was found to be his own handwriting, as verified and reported by the document examiner. Manash, however, denied the signature in the said counter-foil to be his signature. Such disputed question of fact could have been established in a proceeding before the competent Tribunal under the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act). The writ court cannot be asked to conduct a roving enquiry or to sit in appeal over such assessment and cannot convert judicial review proceedings into an inquisitorial one.

5. He argues that Manash was admittedly a workman u/s 2(s) of the ID Act and was governed by the Bipartite settlement of the bank dated 10.04.2002. The writ petition should not have been entertained on the ground of existence of alternative remedy and the Learned Central Government Industrial Tribunal was the appropriate authority to adjudicate the dispute raised in the writ petition.

6. Drawing our attention to paragraph 6 of the punishment order, Mr. Majumder submits that Manash duly replied to the show cause notice and also appeared before the DA with his defence representative for the purpose

of personal hearing and all the arguments advanced on his behalf were duly taken into consideration. In view thereof, the allegation that there had been a breach of the principles of the natural justice is absolutely unfounded. Such arguments, as advanced, before the learned Judge were glossed over and no finding was returned on the same. Such infirmity warrants interference in the present appeal.

7. Mr. Neogi, learned advocate appearing for Manash denies and disputes the contention of Mr. Majumder and submits that admittedly the ER dated 29.11.2007 was not served upon him prior to issuance of the show cause notice dated 22.01.2008. The ER was supplied to him along with the show cause notice dated 22.01.2008. Prior to formation of opinion as regards the punishment, Manash was not given any opportunity to reply to the ER. A delinquent has a right to receive the ER before the DA arrives at its conclusion as regards the guilt. Manash had been deprived of such right and that as such the learned Judge rightly arrived at the finding that there had been a violation of the principles of the natural justice as also procedural irregularities which had the effect of vitiating the enquiry proceeding.

8. He further submits that the DP was initiated in the year 2007 which culminated in an order of compulsory retirement in the year 2008. The writ petition thereafter was preferred in the year 2008 itself which remained pending till the year 2024 and in the midst thereof, Manash retired in the year 2018. In the said conspectus and as the employer employee relationship had ceased in the year 2018, the learned Judge

rightly observed that no further liberty can be afforded to the bank to continue with the DP.

9. He argues that the existence and pursuit of an alternative remedy is more of a rule of convenience than a rule of law. In case of violation of principles of natural justice and procedural irregularities existence of an alternative remedy would not be a bar towards maintainability of a writ application. In support of such contention reliance has been placed upon the judgments delivered in the cases of *State of H.P. and Ors. Vs. Gujrat Ambuja Cement Ltd.*, reported in *(2005) 6 SCC 499* and *Ramesh Chandra Sharma and Ors. Vs. State of Uttar Pradesh and Ors.*, reported in *(2024) 5 SCC 217.*

10. Heard the learned advocates appearing for the respective parties and considered the materials on record.

11. The argument of Mr. Majumder that there had been no violation of the principles of natural justice was rightly discounted by the learned single Judge since Manash was not supplied a copy of the ER before the DA arrived at its conclusion with regard to the alleged guilt of Manash. The fact that the ER was supplied to the Manash for the first time along with the show cause notice could not be disputed by the appellant. The denial of the opportunity to deal with the ER before the DA took its decision on the charges, is denial of reasonable opportunity and we do not find any infirmity in such finding warranting interference in appeal.

12. It is no longer *res-integra* that existence of an alternative remedy is not an absolute bar against maintainability of a writ petition under Article 226 of the Constitution of India. The plenary powers vested in the Writ Court cannot be fettered by a mechanical tendency. Applying such proposition of law to the facts and circumstances of the case, the learned Judge, in our opinion rightly observed that breach of principles of natural justice could not have been rectified even by the learned Tribunal although before the Tribunal the bank could have got an opportunity to establish the charge afresh.

13. The litigation has continued for a period of more than 15 years. Manash cannot be directly held responsible for such efflux of time. Had the matter attained finality in the year 2008 itself, the appellant could have been directed to proceed from the stage the DP stood vitiated. However, Manash had already retired in the year 2018. In the said conspectus of facts and refusing to saddle the bank with the financial burden towards payment of actual benefits, we are of the opinion, the learned Judge had rightly balanced the equities among the parties.

14. Upon dealing with all the factual issues, the learned Judge arrived at specific findings and there is no error, least to say any patent error of law in the judgment impugned and as such no interference is called for in the present appeal.

15. The appeal and the connected application are, accordingly, dismissed.

16. There shall, however, be no order as to costs.

17. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.) **(Tapabrata Chakraborty, J.)**